



Town of Colchester, Connecticut

OFFICE OF THE ASSESSOR

127 Norwich Avenue, Colchester, Connecticut 06415

February 24, 2016

Re: HB 5183

Members of the Planning & Development Committee:

I would like to express our support for the concept raised in HB 5183 AAC Attorney Fee Agreements in Municipal Tax Appeals.

Contingency Fee Assessment Appeals have become an industry in Connecticut that results in eroding tax revenue. The problem continues to worsen and was recently the subject of a story in the January 2015 issue of Connecticut Magazine (attached).

While HB 5183 addresses the issue, it also contains restrictions and only applies to property assessed in excess of 1.5 Million Dollars. Since assessments are 70% of Fair Market Value, this limits the legislation to properties with a FMV in excess of 2.1 Million dollars which only represents a very small portion of the municipal Grand List.

Additionally, HB 5183 contains a restriction making it only applicable to commercial property.

Contingency Fee Appeals are not based on value but are based on flooding the court system with thousands of appeals that municipalities cannot defend and are forced to settle. Leaving all residential property, as well as all commercial under 2.1 Million dollars, only takes a small bite out of the problem and will encourage these tax representative companies (coming from as far away as Missouri) to set their sights on the excepted properties.

I thank your committee for addressing this issue and raising HB 5183 however, I sincerely request that you pass legislation that cures the problem completely, rather than something that pushes the problem into another sector of the Grand List.

Working on a contingency fee should be banned for all properties because it is a USPAP (Uniform Standards of Professional Appraisal Practices) violation. When representatives and attorneys are working on a contingency fee basis, how can they possibly be able to arrive at an unbiased opinion of value as required in a tax appeal?

Please consider substitute language restricting contingency fee representation on all tax appeals.

Respectfully,

John Chaponis

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The Connecticut Story

Love Target's Prices? How About Big Box Stores' Property Tax Appeals?

BY CHRISTOPHER HOFFMAN



Several years ago, Newington Assessor S. Steven Juda become concerned about the growing flood of property tax appeals swamping his and other towns.

Juda, widely recognized by his peers as one of the state's ablest assessors, began doing what he does best: collecting and analyzing data.

The results were sobering. Connecticut municipalities are hemorrhaging at least \$20 million of tax revenue a year from unjustified tax appeals, an amount equal to the annual budgets of the many medium-sized towns, Juda found.

"The number is probably greater than that," Juda says. "It's getting worse. Every time I go to (tax) court, I see assessors from other towns."

Manchester Assessor John Rainaldi, president of the [Connecticut Association of Assessing Officers](#), calls Juda's figure accurate. He added at least another \$200,000 a year is spent statewide fighting unwarranted tax appeals.

"It comes up all the time at our meetings," Rainaldi says. "What can be done about it? It's a major concern and a major issue."

"It's an Industry"

Once primarily the province of anti-tax ideologues and skinflints, local tax appeals have become big business in Connecticut and nationwide. In Connecticut alone, tax representatives—companies that specialize in bringing tax appeals—and lawyers earn millions of dollars a year challenging local assessments.

The state law firm of [Pullman & Comley](#), for example, whose clients include Target and Walgreens, employs four attorneys in a separate tax appeal division. [Joseph C. Sansone Company](#), a Missouri-based tax representative that operates nationwide, does so much business in Connecticut that it has a satellite office in Hartford.

“It’s absolutely an industry nationwide,” West Hartford Assessor Joseph Dakers Sr. says.

Both law firms and tax representatives openly recruit clients. Pullman & Comley sends emails to prospective customers already known to the firm. Sansone routinely uses the Freedom of Information Act to obtain a list of commercial property owners in towns undergoing revaluation, assessors say. It then blitzes taxpayers with letters and sometimes phone calls offering to reduce their taxes.

The offers are hard to resist because Sansone and other tax representatives charge taxpayers nothing up front, assessors say. The client only pays if the tax representative wins a reduction, the fee typically being a third to half of any savings.

By working on contingency, tax representatives can swamp a town with questionable tax appeals at very little cost to them and none to their clients, assessors complain. Unable to litigate so many cases, assessors say they have no choice but to settle, even if appeals are meritless.

“Tax representatives can be very, very frustrating for assessors,” says Colchester assessor John Chaponis, who tries to resist them. “My feeling is that they don’t care about fair market value at all, but rather what kind of reduction they can get for doing as little work as possible so they can charge a fee.”

Joseph C. Sansone Company did not respond to requests for comment for this article. Extax Consulting Group, LLC, of Massachusetts, another tax representative active in the state, also declined comment.

Big Tax Breaks for Big Corporations, None for Homeowners

Tax representatives aren’t the only problem, assessors say. Many large corporations, including Target and Walgreens, routinely appeal assessments, a practice viewed as a tax avoidance strategy instead of a dispute over value. Stop & Shop, Lowe’s and Home Depot also frequently sue to lower property values, court records show.

Assessors say that even before values are set, they can predict with 80 or 90 percent accuracy what businesses will appeal.

“An assessor is never always right,” Juda says. “But having said that, an assessor isn’t always wrong either. And the presumption by all these appeals is that the assessors in all these communities are always wrong.”

Target, for example, has appealed the assessments on 13 of its 20 Connecticut stores since 2007, winning reductions that have slashed its yearly local tax bill by hundreds of thousands of dollars.

Asked to comment on its tax appeal policies, Target spokesman Evan Lapiska said in a written statement that the Minnesota-based company “pays its fair share of taxes and utilizes available appeal procedures, when necessary, to ensure our properties are assessed at fair market value.”

Facing deep-pocketed corporations, big potential legal bills, years of delay and pressure from the courts to avoid trials, assessors say they have no choice but to settle in all but the most egregious cases. Juda estimates that 95 percent of appeals result in reductions, justified or not.

That's an argument that attorney Elliott Pollack of Pullman and Comley, whose firm has saved Target, Walgreens and others hundreds of thousands of dollars through tax appeals, does not buy. His clients' appeals are backed by data and have merit, he claims. He says assessors should go to trial if they believe reductions are unjustified.

"If they feel their numbers are correct, why do they settle?" Pollack says. "Value is an art as well as science. Tax appeals begin where the science ends."

While tax representatives and lawyers may be saving corporate America millions of dollars every year, don't expect them to knock on the door of your house any time soon. Appealing home assessments typically costs more than the potential savings, making them unattractive to tax-appeal specialists.

Meanwhile, homeowners and businesses get left holding the bag for successful appeals.

"For every stipulated judgment granting a reduction, a tax increase gets passed on to every other taxpayer in my town," Chaponis says.

"We Feel that the Deck is Stacked Against Us"

Assessors' biggest complaint is the failure of the Tax and Administrative Appeals Court in the New Britain Superior Court to make taxpayers provide documentation that municipal values are wrong.

During early pretrial conferences, judges do not require plaintiffs to present formal appraisals or detailed rebuttals of assessments. Instead, they let them submit rudimentary, often deeply flawed "analyses" supported by little or no data and prepared by un- or under-qualified consultants, according to assessors.

Judges give these often questionable values the same credence as the town's carefully calculated and voluminously documented assessments and then try to get the parties to meet in the middle. That effectively flips the burden of proof from the taxpayer, where the law puts it, to the town, say assessors.

"We feel that the deck is stacked against us," Bethel assessor Ann Marie Heering says. "Mine should be considered right until it's proven wrong, and that's what the law says it should be."

Assessors say the court will order taxpayers to provide appraisals, but only when initial talks fail and cases appear headed to trial.

Judges also let out-of-state appraisers unlicensed in Connecticut and brought in for the day by Sansone and other tax representatives render opinions on value. That's a possible violation of state law because appraisers must be licensed in Connecticut to do appraisals here. The practice also raises ethical issues because appraisers are prohibited from working on contingency, the basis of many tax representatives' business.

Juda and other assessors add that tax court judges are otherwise knowledgeable, fair and do a good job. But some assessors and lawyers who defend towns in tax appeals avoid the New Britain tax court, saying local courts are quicker to compel taxpayers to present hard evidence.

“New Britain is a problem for us,” says Milford assessor Dan Thomas, who tries to keep his cases in the Ansonia-Milford district.

New London attorney Jeffrey Londregan, who defends towns in tax appeal cases, also avoids the New Britain tax court. He has won relatively quick dismissals of three tax appeals since 2013 when Sam’s Food Stores failed to respond to local judges’ orders to present documentation that municipal assessments were wrong. Chaponis got a Sam’s appeal in Colchester tossed using the same approach.

The appeals were among 61 affecting at least 67 properties that Sam’s, through attorney Michael D. Reiner, one of the state’s most prolific tax appeal filers, has brought since 2012.

“My client didn’t respond in the time required by the court,” says Reiner, who works for tax representatives and himself and defended his client’s many appeals as based on solid evidence. “It was an oversight and as a result the court dismissed the cases.”

Reiner, who declines to say whether he is working for a tax representative in the Sam’s cases, has won the Wethersfield-based chain reductions in 32 of the cases so far, lowering its taxes by tens of thousands of dollars a year, court records show.

Asked for comment on assessors’ concerns, Chief Court Administrator Patrick L. Carroll III calls the New Britain tax court “a success.”

“Much of the feedback has been positive, as parties are able to have their matter addressed quickly,” Carroll said in a prepared statement. “I should note that if the parties choose not to settle, they always have the option of going to trial.”

Solutions

Assessors suggest much could be done to discourage abusive tax appeals: outlaw tax appeals on contingency; require taxpayers to provide appraisals or in-depth rebuttals before pretrial conferences; and enforce rules governing appraisers.

Other proposals include a separate court system for tax appeals at which judges would have independent real estate appraisers at their disposal.

“Both parties would go into a situation where the court is staffed with real estate appraisal professionals who are knowledgeable in all areas and could lend credibility to one side or the other,” says Juda.

Absent change, however, the steady erosion of local tax revenue will likely continue, assessors warn.